ECONOMY, ENERGY AND FAIR WORK COMMITTEE

DAMAGES (INVESTMENT RETURNS AND PERIODICAL PAYMENTS) (SCOTLAND) BILL

SCOTTISH GOVERNMENT - Supplementary Evidence

22 November 2018

At the meeting on 6 November, the Minister said that her officials would provide information on the following points:

- *Distribution of returns generated by the notional investment portfolio to illustrate a 50% risk of under-compensation; and*
- *The evidence base for the 30-year period for the notional investment.*

Scottish Government's Response

On the first point it would be very helpful if the Committee could clarify what it is looking for in terms of further evidence on the distribution of returns generated by the notional investment portfolio to illustrate a 50% risk of under compensation.

The analysis carried out by the Government Actuary took the portfolio and assumptions set out in the Bill and used a third-party Asset Liability Model, the Economic Scenario Generator (ESG) to generate 1,000 simulations of future investment returns starting from, and based on market conditions as at 31 December 2017. From that, they were able to plot the probability of over or under compensation. This is set out in their Report, in particular at section 7, table 6, and was then tabulated in the supplementary slides provided by the Government Actuary which we sent to the Committee. I attach links to both of these papers.

https://www2.gov.scot/Topics/Justice/law/damages/damagesetc/GAD-discount-rate-analysis-05-09-2018
https://www2.gov.scot/Resource/0054/00542438.pdf

On the evidence base for the 30 year damages profile, as the Minister set out the use of a 30 year damages profile is an assumption. Pannell's Financial Planning Ltd described it as a reasonable presumption. We believe it represents a useful duration which is neither too short nor too long and gives a Personal Injury Discount Rate (PIDR) which is a reasonably good fit for a broad range of award periods. A longer damages profile period would potentially provide a PIDR which could be too skewed away from being suitable for shorter award periods.

It is important not to conflate the damages profile assumption with the actual length of awards. The Minister explained that damages awarded to pursuers will still reflect the pursuer's life expectancy (where that is relevant) – the 30 year period is only being used to set the discount rate and not limit award sizes. So, a young adult with a life expectancy of 50 years will still receive much more money than the 56 year old with a life expectancy of 30 years. As the Minister pointed out it is also worth noting that not all damages are rest of life – for example some might be paid in respect of lost earnings up to retirement age or others for fixed periods.